

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

HECTOR LUNA, JULIAN GARCIA,
FRANCISCO JAVIER LORENZO,
SANTOS MALDONADO, PATRICIA
WOODARD and BARTOLO NUNEZ
individually and on behalf of others
similarly situated,,

Plaintiff,

v.

DEL MONTE FRESH PRODUCE
(SOUTHEAST), INC.,

Defendant.

CASE NO. 1:06-cv-2000-jec

MOTION FOR PROTECTIVE ORDER
LIMITING DISCOVERY FROM OPT-IN PLAINTIFFS

Plaintiffs move this Court, pursuant to Federal Rule of Civil Procedure 26(c), for a protective order limiting discovery directed to non-representative members of the opt-in class presenting claims under the Fair Labor Standards Act (“FLSA”) 29 U.S.C. §§ 201-219 (2009). Defendant’s attempts to obtain full discovery from all non-representative individuals opting in to the Count III FLSA class are inappropriate and undermine the purposes of collective action litigation. Absent adequate justification and in

light of the considerable burdens posed by defendant's discovery requests, plaintiffs urge this Court to limit the discovery directed to non-representative workers who have opted-in to the Count III FLSA class.

Defendant has already benefitted from depositions and extensive written discovery taken from all representative plaintiffs, as well as the depositions of an adequate sample totaling 11.5% of the opt-in plaintiffs. Plaintiffs have offered and will soon provide full written discovery from the same 11.5% sample of opt-ins. Defendant, as the employer of the plaintiff class in question, already has unique access to much of the information they have sought from each opt-in plaintiff, and can make no showing of a compelling need to obtain further discovery from non-representative members of the opt-in class.

As set forth more fully in Plaintiffs' accompanying memorandum of law, the Court should grant plaintiffs' motion and limit the discovery and depositions taken from the non-representative opt-in plaintiffs to a sample equal to 10% of the workers who ultimately opt-in to the FLSA class in this case. Plaintiffs further request that, for the reasons set forth in the Court's May 18, 2007 Order [Rec. Doc. 144 at 4-8], any further depositions of opt-in plaintiffs who are Mexican nationals be taken in Mexico City, via telephone, or by written questions pursuant to Fed.R.Civ.P. 31.

Respectfully Submitted,¹

/s/ Andrew H. Turner

Andrew H. Turner *pro hac vice*

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¹ Pursuant to L.R. 7.1D, the undersigned certifies that this pleading complies with the font and point selections permitted by L.R. 5.1B. This Motion was prepared using the Times New Roman 14 point typeface.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have on **June 6, 2009** electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification to the following attorneys of record for the Defendants:

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